CHOW JIEEN & ORS v. CHAIRMAN OF UNITED CHINESE SCHOOL COMMITTEES' ASSOCIATION OF MALAYSIA & ANOR

COURT OF APPEAL, PUTRAJAYA
IDRUS HARUN JCA
SURAYA OTHMAN JCA
STEPHEN CHUNG JCA
[CIVIL APPEAL NO: W-02(NCVC)(A)-959-05-2018]
29 JULY 2019

EDUCATION: *Examination – Prohibition on conduct of examinations – Private school – Chinese Private Secondary Schools ('CPSS') – Unified Examination Certificate ('UEC examination') conducted by United Chinese School Committees' Association of Malaysia ('Dong Zong') – Whether students of Sekolah Menengah Chong Hwa Kuantan eligible to sit for UEC examination – Whether school part of CPSS – Whether Dong Zong ought to obtain prior written approval from Director of Examinations under s. 69(1) of the Education Act 1996 – Whether Dong Zong came within s. 69(4)(a) of Education Act 1996 – Whether there exists provision in Education Act 1996 which mandates separate application to Director of Examinations – Whether conduct of UEC examination by Dong Zong and students taking examination lawful – Education Act 1996, ss. 16, 17, 18, 19 & 151*

SM Persendirian Chong Hwa Kuala Lumpur ('Chong Hwa Kuala Lumpur') applied to the Minister of Education to establish a branch in Kuantan to be known as Sekolah Menengah Chong Hwa Kuantan ('Chong Hwa Kuantan'). Its application stated that apart from teaching the national curriculum, it would also be teaching the 'Kurikulum Sekolah Menengah Persendirian Cina yang ditetapkan oleh Dong Zong (United Chinese School Committees' Association of Malaysia) and for its students in Kuantan to sit for the Unified Examination Certificate (UEC) examination conducted by Dong Zong. The Director General of Education approved the registration of the school as such under ss. 17, 18 and 19 of the Education Act 1996 ('the Act'). It was not disputed that students of 60 Chinese Private Secondary Schools ('CPSS') in the country were eligible and allowed to sit for the UEC annual examination conducted by Dong Zong. Subsequently, the plaintiffs ('appellants') filed an originating summons ('OS') against the Government of Malaysia (Malaysian Ministry of Education), the Chairman of the United Chinese School Committees' Association of Malaysia ('first respondent') and Chong Hwa Kuantan ('second respondent') contending that Chong Hwa Kuantan, being not one of the 60 CPSS, and Dong Zong, in not obtaining any prior written approval from the Director of Examination under s. 69(1) of the Act, could not conduct the UEC examination in the school for its students. The High Court did not grant the OS application. The appellants thus filed an appeal against the decision of the High Court. The appellants submitted that the first respondent had contravened s. 69(1) of the Act when it conducted the UEC and allowed the students of the second respondent to

A sit for the same. The first respondent averred that the Director General of Education Malaysia had approved the registration of the school to teach both the national curriculum and the curriculum outside the national curriculum. It was submitted that this was confirmed in the certificate of registration issued by the Ministry and therefore no further or subsequent application or
B approval was required. The second respondent adopted the submission of the first respondent and added that there was no dispute or quarrel between the appellants and the students of the second respondent, and that it was not within the purview of the appellants to question whether it was legal for Dong Zong to allow the 113 students to participate in the UEC examination
C which was within the jurisdiction and power of the Ministry of Education and which could not be enforced by the appellants.

Held (dismissing appeal with costs)
Per Stephen Chung JCA delivering the judgment of the court:

D **(1)** Pursuant to s. 69(1) of the Act, subject to sub-s. (4), no person or educational institution shall conduct, permit or cause to be held or conducted, or be in any manner concerned in the holding or conducting of, any examination for any pupil of an education institution or for any private candidate without the prior written approval of the Director of Examinations. However, sub-s. (4) states that sub-s. (1) shall not apply
E to (a) a body or syndicate established to manage and conduct examinations under s. 68(e). Section 68(e) of the Act states that the Minister may make regulations to provide for the conduct of examinations including the establishment of a body or syndicate to manage and conduct examinations. (para 28)

F **(2)** Although Dong Zong is not registered as an educational institution, it comes within the definition of 'person' in s. 3 of the Interpretation Acts 1948 and 1967. The *Concise Oxford English Dictionary* defines 'body' to mean 'an organised group of people with a common function.' Dong Zong comes within the definition of a 'body' in s. 68(e) of the Act. In
G construing the statute, the court must not only look at the language of the statute, but also from a consideration of the social conditions which gave rise to it, and that of the mischief which it was passed to remedy. Dong Zong was set up, among others, to manage the curricula, examinations and teachers of the Chinese schools in the country. In the
H statement made in Parliament in 1995, the 60 CPSS in the country were eligible and allowed to sit for the annual UEC examination conducted by Dong Zong. In passing the Education Act 1996, s. 151 is a saving provision which preserves the status of Dong Zong to conduct the UEC examination and of the 60 CPSS to sit the UEC examination under the
I Act. Therefore, Dong Zong came within s. 69(4) (a) of the Act. (para 29)

(3) Applying to the Minister to establish an educational institution and in conducting the examinations, there is no provision in the Act which mandates a separate application to the Director of Examinations. Chong

Hwa Kuala Lumpur made one application to establish its branch in Kuantan known as Chong Hwa Kuantan, including to hold and conduct the examinations under both curricula. It did not make any separate applications to hold examinations under the national curriculum and/or the curriculum conducted by Dong Zong. The fact that Chong Hwa Kuantan was approved as a private educational institution under ss. 16, 17, 18 and 19 of the Act and had held both examinations, the approval to hold and conduct the examinations was implicit in the approval given to establish and register the school. The fact that the school was allowed to hold the examinations such as PMR, SPM and STPM under the national curriculum, without a separate written approval of the Director of Examinations, and no action was taken against the school for holding these examinations, and the UEC examinations, confirmed this conclusion. (para 34)

(4) The appellants were not students of Chong Hwa Kuantan and thus their rights had not been affected. Whether the 113 students of the school were legally allowed to sit for the UEC examination was none of their concern. This should be the concerns of the 113 students and yet none of them had made any complaint or such application. The appellants did not have a real interest. The 113 students of the school had sat for the UEC examination in 2016. Since then, the UEC examination had been held every year at the school and a few hundred students had sat for the UEC examination at the school. The OS application would unduly affect all of them but they were not made parties to the OS and not given the opportunity to be heard. Justice requires that they must be afforded the right and opportunity to be heard. Justice also requires that no order shall be made or shall unduly affect them when they are not parties to the proceedings and not afforded the opportunity to be heard. Thus, there were no merits in the appeal. (paras 38, 42 & 43)

Case(s) referred to:

Affin Bank Bhd v. Mohd Kasim Ibrahim [2013] 1 CLJ 465 FC ***(refd)***

Ang Game Hong & Anor v. Tee Kim Tiam & Ors [2018] 1 LNS 2008 CA ***(refd)***

Bar Malaysia v. Index Continent Sdn Bhd [2016] 2 CLJ 545 FC ***(refd)***

Fairise Odyssey (M) Sdn Bhd v. Tenaga Nasional Bhd [2018] 10 CLJ 281 CA ***(refd)***

Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2017] 4 CLJ 265 FC ***(refd)***

Lim Cho Hock v. Government Of The State Of Perak, Menteri Besar, State of Perak And President, Municipality of Ipoh [1980] 1 LNS 43 HC ***(refd)***

Tan Kim Hock Product Centre Sdn Bhd & Anor v. Tan Kim Hock Tong Seng Food Industry Sdn Bhd [2018] 2 CLJ 567 FC ***(refd)***

Vijayarao Sepermaniam v. Suruhanjaya Perkhidmatan Awam, Malaysia [2018] 9 CLJ 141 FC ***(refd)***

Legislation referred to:

Education Act 1996, ss. 2, 16(c), 17, 18, 19, 67, 68(e), 69(1), (4)(a), 73(1), (2), 74, 77(1), 151

Interpretation Acts 1948 and 1967, s. 3

For the appellants - Douglas Yee Wan-Li & Lim Pit Feng; M/s Douglas Yee
For the 1st respondent - Wong Kong Fatt & Lim Hoon Shi; M/s KF Wong & Lee
For the 2nd respondent - Ong Siew Wan & Toh Seng Soon; M/s Andrew David Wong & Ong

[Editor's note: For the High Court judgment, please see Chow Jieen & Ors v. Kerajaan Malaysia (Kementerian Pendidikan Malaysia) & Ors [2019] 10 CLJ 64 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Stephen Chung JCA:

The Appeal: Background Facts

[1] In 2010, SM Persendirian Chong Hwa Kuala Lumpur (Chong Hwa Kuala Lumpur) applied to the Minister of Education to establish a branch in Kuantan to be known as Sekolah Menengah Chong Hwa Kuantan (Chong Hwa Kuantan). Its application stated that apart from teaching the national curriculum, it would also be teaching the 'Kurikulum Sekolah Menengah Persendirian Cina yang ditetapkan oleh Dong Zong' (United Chinese School Committees' Association of Malaysia) and for its students in Kuantan to sit for the Unified Examination Certificate (UEC) examination conducted by Dong Zong.

[2] In July 2012, the Director-General of Education approved the registration of the school as such under ss. 17, 18 and 19 of the Education Act 1996 (the Act). Chong Hwa Kuantan conducted the first UEC examination for its students in October 2016. Since then it had conducted and continues to conduct the UEC examination every year.

[3] It is not in dispute that students of 60 Chinese Private Secondary Schools (CPSS) in the country were eligible and allowed to sit the UEC annual examination conducted by Dong Zong. This *status quo* was confirmed in a statement made in Parliament (see Hansard: Bil. 63, Isnin, 18 Disember 1995). Chong Hwa Kuala Lumpur is one of the 60 CPSS.

[4] In October 2016, the four plaintiffs filed an originating summons (OS), as amended, against the Government of Malaysia (Malaysian Ministry of Education) (first defendant), the Chairman of the United Chinese School Committees' Association of Malaysia (second defendant/first respondent) and Chong Hwa Kuantan (third defendant/second respondent) contending that Chong Hwa Kuantan, being not one of the 60 CPSS, and Dong Zong in not obtaining any prior written approval from the Director of Examination under s. 69(1) of the Act, could not conduct the UEC examination in the school for its students. The OS posed the following questions and for a declaratory order:

> 1(a) Whether it is legal for Dong Zong to allow the 113 students from Chong Hwa Secondary Kuantan (or any of its students) to participate in an examination known as the Unified Examination Certificate (UEC)?

1(b) Whether the 113 students from Chong Hwa Secondary School Kuantan (or any of its students) are eligible and legal to participate in an examination known as the Unified Examination Certificate (UEC)?

2. In the event that the answer and determination on the above paragraph (1)(a) and/or (b) is negative, whether the results of the UEC examination for the 113 students from Chong Hwa Secondary School Kuantan (or any of its students) are null and void?

3. In the event that the answer and determination on the above paragraph (1)(a) and (b) is negative, a declaration be given to recognise the legality of the UEC examination for all the students from 60 Chinese Private Secondary Schools and that the legality for Dong Zong to conduct UEC examination is not affected.

[5] The first defendant applied to strike out the OS application which was dismissed in the High Court. On appeal, the appeal was allowed and the OS against the first defendant was struck out.

[6] The main issue before the High Court was, whether the first respondent (Dong Zong) was required to obtain the written approval of the Director of Examinations pursuant to s. 69(1) of the Act to conduct the UEC and allowed the students of Chong Hwa Kuantan, not being one of the CPSS, to sit for the same?

[7] After hearing submissions of the parties, the learned judge did not grant the OS application in terms. The first, second and third plaintiffs (appellants) filed an appeal against the decision of the High Court whereas the fourth plaintiff did not appeal.

[8] In the midst of the appeal, the first respondent applied to strike out the appeal on the ground that the appellants lacked *locus standi* and could not maintain this appeal. The record showed that previously, the first respondent made a similar application in the High Court which was dismissed. There was no appeal filed against that decision. After hearing submissions, we dismissed the motion to strike out the appeal and proceeded to hear the appeal on the merits.

[9] During the appeal, the second and third appellants, previously minors, claiming through their parents as litigation representatives, have attained the age of majority and adopted the action. They have applied and were granted leave to amend the title of the proceedings to reflect that fact.

The Appellants' Submission

[10] The appellants submitted that the first respondent as the "person or educational institution" who wishes to "conduct, permit or cause to be held or conducted, or be in any manner concerned in the holding or conducting of" the UEC for students of the second respondent must obtain the prior written approval from the Director of Examinations pursuant to s. 69(1) of the Act which is mandatory.

[11] It was submitted that the first respondent did not obtain the prior written approval and not allowed to conduct the UEC for the students of the second respondent which is not one of the CPSS.

[12] It was submitted that s. 69(4) was not applicable to the first respondent which is not a body or syndicate established to manage and conduct examinations under s. 68(e) of the Act nor conducting examinations for the purpose of assessing its own pupils.

[13] The appellants submitted that the learned judge had erred in holding that the first respondent did not require the written approval of the Director of Examinations pursuant to s. 69(1) based on the relevant correspondence that the Ministry of Education had given its tacit approval for students of the second respondent to take the UEC examination. It was submitted that the mandatory requirement could not be subsumed by the history of the CPSS, the setting of the second respondent and the correspondence from the Ministry of Education.

[14] It was submitted that the first respondent contravened s. 69(1) of the Act when it conducted the UEC and allowed the students of the second respondent to sit for the same.

The First Respondent's Submission

[15] It was submitted that the Director-General of Education Malaysia approved the registration of the school *via* a letter dated 26 July 2012 to teach both the national curriculum and the curriculum outside the national curriculum. It was submitted that this was confirmed in the certificate of registration issued by the Ministry and therefore no further or subsequent application or approval is required.

[16] The first respondent submitted that on 13 October 2014, it had informed the Director-General of Education of Malaysia that Chong Hwa Kuantan would take part in the UEC examination and by a reply dated 23 October 2014, it stated that it had taken note of the letter.

[17] It was submitted that by a letter dated 13 February 2015, the school wrote to the Director-General of Education stating that the Prime Minister had announced that the students of Chong Hwa Kuantan were allowed to take the UEC examination and by a reply, dated 11 March 2015, stating that it had taken note of the letter.

[18] It was submitted that it was clear that students of the school could and can sit for the UEC examination. It was submitted that the conduct of the UEC examination by Dong Zong and the taking of the UEC examination by the students of the school were lawful and in compliance with the approval given by the Ministry of Education. It was submitted that s. 69(1) of the Act did not apply as approval had been given when the school was registered.

[19] It was submitted that since then, the Ministry of Education, the Department of Education and or the Director of Examinations did not issue any show cause letter nor take any action against the respondents.

[20] It was also submitted the UEC is an internal assessment conducted by Dong Zong within the provisions of s. 69(4) of the Act and that the UEC certificate issued by Dong Zong is not recognised by the Ministry of Education as entry to public universities in the country. It was submitted that therefore the students of the school can sit the UEC examination without contravening the Act.

The Second Respondent's Submission

[21] The second respondent adopted the submission of the first respondent and added that there was no dispute or quarrel between the appellants and the students of the second respondent.

[22] It was submitted that the appellants were students of other CPSS in the country whose rights to sit for the UEC examination have never been infringed, interfered or denied and did not suffer any loss or damages and that the 113 students of Chong Hwa Kuantan who sat the UEC examination were not sued as parties in the suit which is against the rule of natural justice and prejudicial to them.

[23] It was submitted that it was not within the purview of the appellants to question whether it was legal for Dong Zong to allow the 113 students to participate in the UEC examination which is within the jurisdiction and power of the Ministry of Education and which cannot be enforced by the appellants.

[24] It was submitted that the questions posed were hypothetical and academic and need not be answered by the court and no court will act in vain by granting meaningless declaration. It was submitted that the appeal be dismissed.

Our Decision

[25] In this appeal, the appellants submitted that Dong Zong is not a body or syndicate established to manage and conduct examinations under para. 68(e) and that s. 69(4) of the Act is not applicable to the first respondent. It was submitted that the first respondent is not even an educational institution as defined in s. 2 of the Act nor is it assessing its own pupils. It was submitted that s. 69(1) is mandatory and it was obligatory for the first and second respondents to obtain the prior written approval of the Director of Examinations for Dong Zong to conduct the UEC examination at Chong Hwa Kuantan and raised the legality of the 113 students of the school to sit the UEC examination in October 2016.

[26] It is a cardinal rule of interpretation of statutes that the provisions must be read as a whole: see *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2017] 4 CLJ 265;

[2018] 2 MLJ 590. Section 69(1) should not be read in isolation. The courts are not confined to undertake a literal interpretation of the words therein but are permitted to construe the purpose in the context and scheme of the relevant Act as a whole: see *Bar Malaysia v. Index Continent Sdn Bhd* [2016] 2 CLJ 545; [2016] 1 MLJ 445. Section 73(1) states that nothing in this Act shall be construed as prohibiting the establishment and maintenance of a private educational institution, which is specifically provided for in s. 16(c). Under sub-s. 73(2), every private educational institution shall comply with this Act and all regulations made under this Act and applicable to the educational institution. Under s. 74, a private educational institution shall comply with the requirements of the national curriculum and shall prepare pupils for prescribed examinations. These requirements are set out in ss. 17, 18, 19, 67, 68 and 69 of the Act.

[27] We now refer to s. 77(1) which states that no private educational institution registered under this Act shall conduct any course of study or training programme jointly, in association, affiliation or collaboration or otherwise, with a university or institution of higher education or other educational institution or organisation within or outside Malaysia, except with the approval in writing of the Minister. This means that a private educational institution may conduct a course of study jointly in association with an organisation with the approval of the Minister. Chong Hwa Kuala Lumpur applied to the Minister to establish a branch in Kuantan. The application was approved and Chong Hwa Kuantan was registered as a private educational institution. Dong Zong is an organisation registered in Malaysia. The school had applied to conduct both the national curriculum and the curriculum conducted by Dong Zong including the UEC examination. As stated, the appellants had raised the legality of Dong Zong in conducting the UEC examination at the school pursuant to s. 69(1) of the Act whereas the respondents submitted that sub-s. 69(4) applied, which is an exception to s. 69(1).

[28] Pursuant to s. 69(1), subject to sub-s. (4), no person or educational institution shall conduct, permit or cause to be held or conducted, or be in any manner concerned in the holding or conducting of, any examination for any pupil of an educational institution or for any private candidate without the prior written approval of the Director of Examinations. Subsection (4) states that sub-s. (1) shall not apply to (a) a body or syndicate established to manage and conduct examinations under para. 68(e); (b) the Malaysian Examinations Council established under the Malaysian Examinations Council Act 1980 (Act 225); and (c) an educational institution which conducts its own examination, test or other forms of assessment for the purpose of assessing its own pupils. Paragraphs (b) and (c) are not applicable to this case. Paragraph 68(e) states that the Minister may make regulations to provide for the conduct of examinations including the establishment of a body or syndicate to manage and conduct examinations.

[29] Although Dong Zong is not registered as an educational institution, it comes within the definition of "person" in s. 3 of the Interpretation Acts 1948 and 1967. There is no definition for the word "body" in the Interpretation Acts nor in this Act. The *Concise Oxford English Dictionary* defines 'body' to mean 'an organised group of people with a common function'. Dong Zong comes within the definition of 'a body' in para. 68(e). In construing the statute, the court must not only look at the language of the statute, but also from a consideration of the social conditions which gave rise to it, and that of the mischief which it was passed to remedy: see *Tan Kim Hock Product Centre Sdn Bhd & Anor v. Tan Kim Hock Tong Seng Food Industry Sdn Bhd* [2018] 2 CLJ 567; [2018] 2 MLJ 1. Dong Zong was set up, among others, to manage the curricula, examinations and teachers of the Chinese schools in the country. In the statement made in Parliament in 1995, the 60 CPSS in the country were eligible and allowed to sit the annual UEC examination conducted by Dong Zong. This fact is not in dispute. In passing the Education Act 1996 to replace the Education Act 1961, s. 151 is a saving provision which preserves the status of Dong Zong to conduct the UEC examination and of the 60 CPSS to sit the UEC examination under the Act. Therefore Dong Zong comes within s. 69(4)(a) of the Act.

[30] Notwithstanding the statement made in Parliament, after Chong Hwa Kuala Lumpur applied to establish a branch in Kuantan to conduct the UEC examination in Kuantan, there were concerns raised on the legality of the UEC examination conducted by Dong Zong for the students of Chong Hwa Kuantan. In his judgment, the learned judge had referred to the letter dated 1 September 2014 from Gabungan Lembaga Pengurus Sekolah Cina Pahang (Gabungan) which raised this issue. By a letter dated 10 September 2014, initially the Pengarah Pendidikan Pahang replied that the school was not allowed to participate in the UEC examination. By a subsequent letter dated 18 September 2014, it withdrew the earlier letter. This was followed by a letter of same date, namely 18 September 2014, from Ketua Pengarah Pelajaran Malaysia stating that the school is registered as a private educational institution (institusi pendidikan swasta) approved to run both the 'Kurikulum Kebangsaan' and 'di luar Kurikulum Kebangsaan'.

[31] In October 2014, Dong Zong wrote to the Ketua Pengarah Pelajaran Malaysia that the students of Chong Hwa Kuantan would be sitting the UEC examination. In February and October of 2015, Chong Hwa Kuantan informed the Ketua Pengarah Pelajaran Malaysia that its students would be sitting in the UEC examination in 2016. In October 2015, Dong Zong and the United Chinese School Teachers' Associations of Malaysia (Jiao Zong) held a conference attended by representatives from the Chinese communities where it was agreed that the students of Chong Hwa Kuantan are eligible and allowed to sit the UEC examination conducted by Dong Zong. There was no complaint made or any action filed to challenge this decision.

[32] The next series of letter was a letter dated 2 September 2016 from the Malaysia Chinese Educated Students Association (Association) to the Director of Examinations Board raising concerns on the legality of the students of Chong Hwa Kuantan taking the UEC examination. By a letter dated 8 September 2016, the Director of Examinations replied to the Association stating that the students of the school were not permitted to take the UEC examination. However, by a letter dated 2 October 2016, the Director of Examination withdrew the earlier letter dated 8 September 2016. Clearly the Director of Examinations had agreed to the UEC examination to be conducted by Dong Zong for the students of Chong Hwa Kuantan in October 2016.

[33] To reiterate, in September 2010, Chong Hwa Kuala Lumpur, being one of the 60 CPSS, applied to the Minister of Education to establish a branch in Kuantan to be known as Chong Hwa Kuantan because there was no 'sekolah menengah persendirian Cina (SMPC)' in Pahang after eight SMPC converted to 'sekolah menegah jenis kebangsaan (SMJK)'. In its application, it stated that its branch would conduct both the national curriculum and curriculum outside the national curriculum, namely the curriculum conducted by Dong Zong offering the UEC examination, including holding the examinations under both curricula.

[34] Reading the Act, in applying to the Minister to establish an educational institution and in conducting the examinations, there is no provision in the Act which mandates a separate application to the Director of Examinations. In this case, Chong Hwa Kuala Lumpur made one application to establish its branch in Kuantan known as Chong Hwa Kuantan including to hold and conduct the examinations under both curricula. It did not make any separate applications to hold examinations under the national curriculum and or the curriculum conducted by Dong Zong. The fact that Chong Hwa Kuantan was approved as such as a private educational institution under ss. 16, 17, 18 and 19 of the Act and have held both examinations, the approval to hold and conduct the examinations was implicit in the approval given to establish and register the school. The fact that the school was allowed to hold the examinations such as PMR, SPM and STPM under the national curriculum without a separate written approval of the Director of Examinations required and no action was taken against the school for holding these examinations, and the UEC examinations, confirmed our conclusion as such: see *Fairise Odyssey (M) Sdn Bhd v. Tenaga Nasional Bhd* [2018] 10 CLJ 281; [2019] 2 MLJ 84.

[35] Further, we refer to the prayers in the OS application. The appellants did not assert that it was illegal for Dong Zong to allow the 113 students from Chong Hwa Kuantan to participate in the UEC examination or that the UEC examination conducted by Dong Zong for the 113 students of Chong Hwa Kuantan was illegal, null and void or that it was unlawful for the 113 students to participate in the UEC examination conducted in October 2016 nor any consequential relief thereto. If they did, these might be justiciable.

[36] Instead, the appellants posed the questions (i) whether it was legal for Dong Zong to allow the 113 students to participate in the UEC examination and (ii) whether the 113 students were entitled and legal to participate in the UEC examination? The appellants then posed the next question that in the event that the answer and determination to the first two questions are negative, whether the results of the UEC examination for the 113 students from Chong Hwa Kuantan were null and void. In prayer 3, they sought, that in the event the answer and determination to the first two questions are negative, for a declaration be given to recognise the legality of the UEC examination for all the students from the 60 CPSS and that the legality for the Dong Zong to conduct the UEC examination (for the 60 CPSS) is not affected.

[37] The appellants contended that due to the uncertainties, they have an interest for a determination as to the legality of the UEC examination for all the students of the 60 CPSS including themselves and the legality of Dong Zong to conduct the UEC examination for them. It is not in dispute that the appellants and the fourth plaintiff are not students of Chong Hwa Kuantan but students of some of the 60 CPSS. Based on the Government statement, recorded in the Hansard in 1995, since that date, there is no dispute that students of the 60 CPSS are entitled and eligible to sit for the UEC examination conducted by Dong Zong. They did not assert that being students of one of the 60 CPSS that they were not allowed or denied from sitting the UEC examination conducted by Dong Zong or that their right as such had been restricted, denied or taken away. Since then, the legality for all the students of the 60 CPSS to sit the UEC examination and the legality for Dong Zong to conduct the UEC examination in the 60 CPSS are no longer in issue. In fact, the appellants have sat the junior UEC examination. Reading the OS application, prayer 3 has become academic and is redundant.

[38] The appellants being not students of Chong Hwa Kuantan, their rights have not been affected. Whether the 113 students of the school were legally allowed to sit for the UEC examination is none of their concern. This should be the concerns of the 113 students and yet none of them has made any complaint or such application. We were of the view that the appellants did not have a real interest in the questions posed: see *Affin Bank Bhd v. Mohd Kasim Ibrahim* [2013] 1 CLJ 465. It has been held that the power to make declaratory judgment is confined to matters justiciable in the court and the binding declaration which it can make is limited to legal or equitable rights and do not extend to moral, social or political matters nor matters of religious rituals: see *Lim Cho Hock v. Government of the State of Perak & Ors* [1980] 1 LNS 43; [1980] 2 MLJ 148. Based on the history of Dong Zong, which the learned judge had referred to in his judgment, it appears that not only the appellants are busybodies in the OS application, the appellants, being minors at the time, are being used as pawns in the struggle between two factions for control of Dong Zong. The courts should not be dragged into or be used for this purpose. Therefore, we came to the view that it was not necessary to answer the questions posed or to make the declaration sought.

[39] Based on the approved registration of the school and the above series of letters, the stand of the Government, *via* the Director of Examinations, the Department of Education and the Ministry of Education, was consistent namely that they did not have any objection to Dong Zong conducting the UEC examination for the students of Chong Hwa Kuantan. Both the Gabungan and the Association, which had raised the concerns, did not file any application nor challenged the legality of the UEC examination conducted by Dong Zong for the students of Chong Hwa Kuantan.

[40] The concerns raised by the Gabungan and the Association about the legality of Dong Zong conducting the UEC examination at Chong Hwa Kuantan were of great interests to the Chinese communities in the country, including the different factions, and those behind the appellants. Notwithstanding the consistent stand of the Government as stated above, shortly, after the letter dated 2 October 2016 by the Director of Examinations, the appellants filed the OS application. If there were any doubts, the appellants should have written to the Director of Examinations or the Department of Education or Ministry of Education to seek clarification before filing the OS application. They would have been the best authorities to answer the questions posed instead of filing the OS application. It appeared to be another attempt to derail the holding of the UEC examination at Chong Hwa Kuantan and a continuing saga of factions fighting which should be put to a stop.

[41] At the material times, as far back in 2012, the appellants did not file any application or injunction to restrain Dong Zong, Jiao Zong, Chong Hwa Kuala Lumpur or Chong Hwa Kuantan from holding the UEC examination at Chong Hwa Kuantan. Similarly, in the OS filed in October 2016, the appellants did not pray for an injunction to restrain the holding of the UEC examination at Chong Hwa Kuantan which was held in October 2016. No explanation was given for the delay.

[42] The 113 students of the school had sat the UEC examination in 2016. Since then, the UEC examination has been held every year at the school and a few hundred students had sat the UEC examination at the school. The OS application will unduly affect all of them but they were not made parties to the OS and not given the opportunity to be heard. Justice requires that they must be afforded the right and opportunity to be heard. Justice also requires that no order shall be made or shall unduly affect them when they are not parties to the proceedings and not afforded the opportunity to be heard: see *Ang Game Hong & Anor v. Tee Kim Tiam & Ors* [2018] 1 LNS 2008; [2018] 4 MLJ 432; *Vijayarao a/l Sepermaniam v. Suruhanjaya Perkhidmatan Awam Malaysia* [2018] 9 CLJ 141; [2018] 12 MLJ 17.

[43] At the end of the appeal, we found that the learned judge was not plainly wrong and that there were no merits in the appeal. Therefore, the appeal was dismissed with costs.